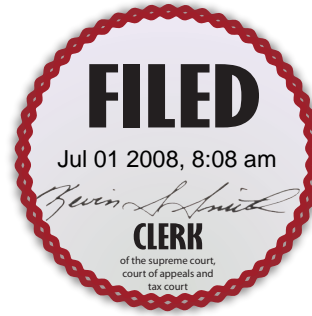


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN J. DEAR,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 92A05-0803-CR-160

APPEAL FROM THE WHITLEY SUPERIOR COURT
The Honorable James R. Heuer, Judge
Cause No. 92C01-0701-FD-00007

JULY 1, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Following his guilty plea to theft and admission to being an habitual felony offender, Dear was sentenced to one and one-half years plus one and one-half years for aggravating circumstances for the Class D felony conviction, enhanced by an additional three years for the habitual felony offender determination, for a total of six years executed.

Dear appeals the sentence imposed. He contends that the sentence was inappropriate within the meaning of Ind. Appellate Rule 7(B). He also argues that the court erred when it failed to determine that his guilty plea was a mitigating factor.

In accord with our supreme court's decision in *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) we may review the trial court's omission of finding a mitigating factor for an abuse of discretion. However, the relative weight assignable to reasons found or which should have been found is not subject to review for abuse.

Our decisions have long held that not every guilty plea is a significant mitigating circumstance which must be credited by the trial court. *Trueblood v. State*, 715 N.E.2d 1242, 1257 (Ind. 1999), *cert. denied*, 531 U.S. 858 (2000). Thus, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) *trans. denied*.

Here in exchange for his guilty plea to one count of theft the state dismissed fifty-three additional separate theft counts. In addition, the state agreed that the sentence to be imposed would have a cap of six years. Therefore we cannot say that the court abused its

discretion in failing to find the guilty plea was a mitigating factor. Dear received a substantial benefit from the plea.

The remaining issue is whether Dear's sentence was inappropriate in light of the nature of the offense and the character of the offender.

The court found as aggravating circumstances Dear's prior adult criminal history and his history of violating probation or suspended sentences. The record amply bears out the findings. This supports the conclusion that the sentence was appropriate in light of the character of the offender. As for the nature of the offense, it was not an isolated occurrence or one prompted by extenuating circumstances. It was, instead, part of a continuing scheme which resulted in the fifty-four separate charges over a relatively brief time span. We cannot say that Dear's sentence was inappropriate.

Affirmed.

BAKER, C.J., and MAY, J., concur.